HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 2074 of 2001 (M/S)
M/s Parihar Minerals P. Ltd.

Vs

Collector, Almora and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 03.03.2006.

Initial of Judge

RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2074 (MS) OF 2001
(Old No.24876 of 2000)

M/s Parihar Minerals Private Limited, through Shri Jawahar Singh Parihar, Director, resident of Durga Colony, Haldwani.

.....Petitioner.

Versus

1. Collector, Almora.
2. Commissioner, Kumaun Division, Nainital, District Nainital.
3. U.P. Financial Corporation, through its Regional Manager, U.P. Financial Corporation, Bedi Building, Opposite Judges Court, Haldwani, Nainital, District Nainital.
4. Deputy Registrar, Almora, District Almora.

.....Respondents.

Dated: 3.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 13th September, 1999 and 26th April, 2000 (Annexures 6 and 7 respectively) passed by the respondents no. 1 and 2. Further a writ of mandamus commanding the respondents for the registration of the sale deed not to levy any penalty.

Briefly stated, the U.P. Financial Corporation (hereinafter referred to as the U.P. F.C.) is an instrumentality of the State

exercising powers under Section 29 of the U.P. Financial Corporation Act to take possession of the industrial units which have taken loan from it and have not repaid the same.

The U.P.F.C. exercising the power under Section 29 of the said Financial Corporation Act took possession of Renuka Hotel situated at Mall Road, Almora and published the advertisement for its sale in the newspaper Amar Ujala on 27.02.1996.

On the basis of the said advertisement, S.S. Hotel and Resorts Limited 29/1 Old Rajendra Nagar, New Delhi on 05.05.1996 offered a price of Rs. 20,00,000/- for the purchase of the said hotel which was not accepted by the U.P.F.C.

Again for the second time, U.P.F.C. published an advertisement on 24.07.1996 for the sale of the said hotel in newspaper 'Dainik Jagran'. In pursuance of the second advertisement published on 24.07.1996 the petitioner made an offer of Rs. 27,00,000/- vide his letter dated 19.08.1996.

The said offer made by the petitioner was accepted by the U.P.F.C. and vide letter dated 04.09.1996 bearing no. 30.31 the U.P.F.C. informed the petitioner about the said acceptance.

In compliance of the aforesaid acceptance letter, the petitioner paid the entire amount and the sale deed was executed by U.P.F.C. to the petitioner and later on the possession was also handed over to the petitioner on 11.12.1997 and the sale deed was executed on 29.03.1997.

After the execution of the sale deed, the proceedings under Section 47-A of the Indian Stamp Act were initiated started against the petitioner demanding the deficiency in the stamp duty on the basis of the valuation to the extent of Rs. 54,74,600/- in which the stamp duty was required to the extent of Rs. 5,47,500/-. The petitioner has paid the stamp duty to the

extent of Rs. 2,23,000/- and the deficiency was directed to be recovered from the petitioner to the extent of Rs. 3,24,500/-.

In reply to the aforesaid notice issued under Section 47-A of the Indian Stamp Act requiring to pay the deficiency of the stamp duty, the petitioner has filed his objections and has stated that no such deficiency can be required from the petitioner in as much as the petitioner is a buyer from the U.P.F.C. on the auction, which was held on the basis of the advertisement on the valuation of the properties.

Learned counsel for the petitioner has submitted that Article 18 Schedule 1 provides that where there is a certificate of sale in a public auction by civil or revisional court or Collector or other Revenue Officer, the stamp duty shall be payable in accordance with Article 18 Schedule 1 of the Indian Stamp Act, 1899.

By way of U.P. Act of 1991, it has been submitted that w.e.f. 1st August, 1981, the Schedule has been amended in Uttar Pradesh by introducing that the certificate of sale in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a court or by a officer authorized or body empowered under the rule shall be in accordance with the duty as a conveyance for a consideration ***equal to the amount of purchase money only.*** Relevant Article 18 of Schedule 1 and U.P. Amendment are quoted below:-

"18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer---

(a)	*where the purchase-money does not exceed Rs. 10;*	*Two annas*
(b)	*where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25;*	*Four annas*
(c)	*in any other case.....*	*The same duty*

	as a conveyance (No. 23) for a consideration equal to the amount of the purchase money only."
"Uttar Pradesh *Certificate of sale in respect of each property put up as a separate lot and sold, granted to the purchase of any property sold by public auction by a Court, or by an officer, authority or body empowered under any law for the time being in force to sell such property by public auction and to grant such certificate.*	*Seventy-five paise* *The same duty as a conveyance (No. 23) for a consideration equal to the amount of the purchase money only."*

Section 2(10) defines conveyance as under:-

(10) ***Conveyance*** *– "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I."*

As will appear from the aforesaid definition that the conveyance includes a conveyance on sale and other instrument by which the property has been transferred. In the present case, transfer having been made by the financial corporation on the price offered to the extent of 27 lacs with the following terms and conditions:-

1. Out of the total sale consideration of Rs. 27,00,000/-you will have to deposit a sum of Rs. 13.50 lacs immediately and balancer amount Rs. 13.50 lacs in two equal installment in Sept. 96 and Oct. 96.

2. You shall complete such legal formalities as may be suggested by te law Department of the Corporation and/or wil ensure execution of sale deed

within 20 days. In case you fail to ensure execution of transfer deed by submitting requisite stamp papers and other papers/information as may be deemed proper by the Corporation, Corporation shall have the right to forfeit the deposit already made.

3. That in the event any litigation by the original borrower before the execution of transfer deed as aforesaid you shall not pay any claim for transfer.

4. The possession of industrial unit shall be delivered to you on execution of sale deed/completion of such other formalities as may be required by the Corporation.

5. All he statutory liabilities arising out of the land of the industrial unit shall be borned by you and Corporation shall not be held responsible for the same.

6. The transfer of assets will be on "AS IS WHERE IS BASIS" .

7. You shall bear the expenses for stamp registration and other miscellaneous charges for registration of transfer deed."

Article 23 defines description of instruments being conveyance as defined by Section 2 (10) of the Indian Stamp Act. It reads as under:-

Corresponding state Sch/Art.	*Description of Instruments*	*Proper Stamp duty*
23.	***Conveyance*** *[as defined by Section 2(10), not being a Transfer charged or exempted under No. 62,--* *Where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50/-.* *Where it exceed Rs. 50/- but does not exceed Rs. 100/-* *Ditto 100 ditto 200* *Ditto 200 ditto 300* *Ditto 300 ditto 400* *Ditto 400 ditto 500* *Ditto 500 ditto 600*	*Eight annas* *One rupee* *Two rupee* *Three rupees* *Four rupees* *Five rupees* *Six rupees*

	Ditto 600 ditto 700 *Ditto 700 ditto 800* *Ditto 800 ditto 900* *Ditto 900 ditto 1,000* *And for every Rs. 500/- or part thereof in excess of Rs. 1,000/-.* *Exemption.- Assignment of coyright by entry made under the Indian Copyright Act. 1847 (now the Copyright Act, 1957), Section 5.*	*Seven rupees* *Eight rupees* *Nine rupees* *Ten rupees.* *Five rupees.*

It was also amended by the State of U.P. w.e.f 8th November, 1989 to the following effect:-

"Uttar Pradesh-

same as in Central act.

Where the amount or value of the consideration of such conveyance as set froth therein or the market-value of the property which is the subject of such conveyance or the market-value of the property which is the subject of such conveyance, whichever is greater, does not exceed Rs. 50/-; *Rs. 6.25*

Where it exceeds Rs. 50/- but does not exceed Rs. 100; *Rs. 12.50*

Ditto	*100*	*ditto*	*200*	*Rs.25.00*
Ditto	*200*	*ditto*	*300*	*Rs.37.50*
Ditto	*300*	*ditto*	*400*	*Rs.50.00*
Ditto	*400*	*ditto*	*500*	*Rs.62.50*
Ditto	*500*	*ditto*	*600*	*Rs.75.00*
Ditto	*600*	*ditto*	*700*	*Rs.87.50*
Ditto	*700*	*ditto*	*800*	*Rs. 100.00*
Ditto	*800*	*ditto*	*900*	Rs. *112.50*
Ditto	*900*	*ditto*	*1,000*	*Rs. 125.00*
And for every Rs. 500/- or part thereof in excess of Rs. 1,000/-.				*Rs. 62.50*

Exemptions. – Assignment of copyright is musical works by resident of, or first published in India."

The possession memo granted by the Assistant Manager (F) is dated 11.02.1997 is quoted below:-

"In compliance of H.O. Fax dated 24.1.97 for transfer of assets of M/s Renuka Hotel, The Mall, Almora to M/s Parihar Minerals (P) Ltd. on total sale consideration of Rs. 27,00,000/- (Rupees twenty seven lacs), the assets of M/s Renuka Hotel, The Mall, Almora have been handed over to M/s Parihar Minerals (P) Ltd. on "As is where is" basis today i.e. 11.2.97."

As will appear from the original Article 18 that in respect of each property sold by public auction, the duty shall be charged equal to the amount of purchase money only. Original Article 17 and the Uttar Pradesh Amendment is in the same line and does not either conveyance the stamp duty on the purchase of any property sold by public auction or curtails the amount of duty but it provides that the ***duty shall be chargeable as a conveyance for a consideration equal to the amount of purchase money only.***

The said offer having been accepted by U.P.F.C., petitioner having paid the amount, the sale-deed having been executed by the U.P.F.C. and the possession having been transferred on 11.2.1997, the sale deed further having been executed on 29.03./1997, the petitioner became the owner of the property in pursuance of the sale-deed. Where the statue provides particular procedure, the same has to be done in accordance with the intention of the legislative case law.

Privy Council in ***Nazir Ahmad V. King Emperor (10)*** wherein the Prinvily Council held that:-

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

In State of ***Uttar Pradesh V. Singhara Singh, AIR 1964 SC 358***, it has been stated as under:-

"(8) The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in an other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

In ***Chandra Kishore Jha v. Mahavir Prasad (1999) 8 SCC 266,*** it has been held as held as under:

"It is well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad v. King Emperor (1935-36) 63 IA 372 : AIR 1936 PC 253 (II), Rao Shiv Bahadur Singh v. State of V.P. AIR 1954 SC 322 : 1954 SCR 1098, State of U.P. v. Singhara Singh AIR 1964 SC 358 : (1964) 1 SCWR 57)."

Thus in view of the aforesaid, petitioner having paid the stamp duty on the purchase money in accordance with Schedule 1 Article 18, the writ petition deserves to succeed.

A writ of certiorari is issued quashing the orders dated 13th September, 1999 and 26th April, 2000 (Annexures 6 and 7 respectively.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Rathour